

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

USDC SDNY DOCUMENT ELECTRONICALLY FILED DOC #: DATE FILED: 11/18/2023

----- X
:
UNITED STATES OF AMERICA, :
:
:
-v- :
:
:
JOAN MERCEDES, :
:
:
Defendant. :
----- X

1:22-cr-522-GHW

ORDER

GREGORY H. WOODS, United States District Judge:

On November 5, 2023, counsel for Joan Mercedes submitted a letter requesting a modification of Mr. Mercedes' conditions of pretrial release from home incarceration to a curfew. Dkt. No. 246. In that letter, counsel for Mr. Mercedes explained the justifications for the proposed modification. The first justification was the asserted desire of Pretrial Services that Mr. Mercedes be permitted to participate in "STRIVE, a training program that prepares people for jobs that require OSH certifications such as flagging." *Id.* Counsel also noted that Mr. Mercedes was expected to interview for a job sometime after the date of the letter. Counsel then represented to the Court that "This modification is necessary for Mr. Mercedes to participate in STRIVE or to accept the job offer." *Id.*

The Court denied the request to modify the conditions of Mr. Mercedes' pretrial release without prejudice. Dkt. No. 253. The Court requested further information in support of the request, particularly regarding the position of Pretrial Services regarding the request. The request for supplemental information was provoked, among other things, by counsel's representation to the Court that a modification of the defendant's conditions of pretrial release from home incarceration to a curfew was "necessary" to permit Mr. Mercedes to participate in employment or job training with the consent of Pretrial Services. Given that a lesser modification to the conditions of the

defendant's pretrial release—namely to a condition requiring home detention—would also permit his participation in those activities, the basis for counsel's representation to the Court that the proposed change to a curfew condition was "necessary" was unclear. It remains unclear.


For, among other things, the supplemental submission (the "Response") filed by counsel in response to the Court's order, Dkt. No. 254, describes the position of Pretrial Services with respect to the prospective modification in different terms. First, the Response states that Pretrial Services takes the position that home detention is the least restrictive provision. *Id.* ("Pretrial believes that *home detention*, which would permit Mr. Mercedes to participate in training programs and get a job, is the least restrictive condition necessary to ensure that Mr. Mercedes appears for court as required and is not a danger to the community.") (emphasis added). Later, in a block quote, the Response presents the position of Pretrial Services as supporting a curfew. *Id.* ("Given the initial recommendation, the defendant's compliance and efforts with supervision, Pretrial Services has advised that they believe that *curfew* with location monitoring is the least restrictive conditions.") (emphasis added). Presented with two different statements of the position of Pretrial Services, and understanding that a curfew is not necessary to permit the defendant to participate in employment or job training—the prompts for the requested modification—the Court will grant the request in part and deny it in part.

The conditions of Mr. Mercedes's pretrial release are modified as follows: the condition requiring home incarceration is deleted and replaced with a condition requiring home detention. All other conditions of the defendant's pretrial release remain in full force and effect.

The Clerk of Court is directed to terminate the motion pending at Dkt. No. 254.

SO ORDERED.

Dated: November 18, 2023
New York, New York



GREGORY H. WOODS
United States District Judge